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ABSTRACT

Politics and sex are regular entrees on the school curriculum menu, but since the Supreme Court's 1960s revival of the "wall of separation" between church and state, religion has been censored from the curriculum as well as from the school routine. The free exercise of religion, guaranteed by the First Amendment, is accommodated in U.S. school systems; however, the prohibition against establishment of religion in schools (also guaranteed by the First Amendment), while theoretically simple, is difficult in practice. The exclusion of the role of religion in society's past and present in school textbooks, courses, libraries, and class discussions has resulted in "ethically illiterate" students. Policy development in religious studies should follow the same processes chosen for other new initiatives. A public information program as well as teacher training should be included in religion curriculum planning. (KM)

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Politics, religion, and sex. At one time, polite society considered these topics taboo. Today, not only are they common social fare, two are regular entrees on the school curriculum menu. Only religion has remained outcast since the '60s when the Supreme Court revived Thomas Jefferson's "wall of separation" between church and state by banning formal prayers, Bible readings, and some types of public aid to parochial schools as violations of the Constitution's First Amendment.

In many parts of the nation, the unintended effect of Supreme Court decisions was to censor religion from curriculum as well as from school routine. But, hearing the call from a coalition of groups as diverse as the American Civil Liberties Union and the American Academy of Religion, now some school boards are leaning a ladder against the wall and inviting students to survey the religious landscape.

Religious rights

The First Amendment in part reads: "Congress shall make no law respecting an *establishment* of religion nor prohibiting the *free exercise* thereof..." In 1926 the Supreme Court began applying the Bill of Rights to state governments — and therefore to public schools in their role as agents of the state.

- **Free exercise of religion.** Individuals have an unlimited right to religious belief and a limited right to engage in religious activity free from interference. In defining the many shades of religious gray, courts look to the strength of the person's conviction, the goal of the school policy or practice in question, and the extent of the burden imposed by the restriction.

Examples of educational accommodations to the free exercise of religion include release time for religious instruction, excused absences for religious holidays, and the use of "opt out procedures" or alternate materials in potentially controversial areas.

- **No establishment of religion.** The Court now applies a three-pronged test in this area. School practices or policies must have a *secular purpose* and their primary effect should *neither advance nor inhibit one religion or religion in general*. Furthermore, a school activity or a form of public assistance to religion should *not require an excessive entanglement* or involvement between religious institutions and public schools.

In theory, simple. In practice, hard. For instance:

- A Bible located on the teacher's desk or in the classroom as optional reading materials — *unconstitutional*; a Bible used as part of a religiously neutral curriculum or located in the school library — *constitutional*
- Posting of the Ten Commandments in classrooms — *unconstitutional*; a display of a variety of religious symbols such as crosses, menorahs, crescents, Stars of David, creches — *constitutional*.
- Public school busing of parochial students to and from school — *constitutional*; on field trips — *unconstitutional*.
- Publicly funded speech and hearing testing of parochial students at public or parochial schools — *constitutional*; guidance counseling and remedial services — *unconstitutional* if the services are conducted at the parochial school but *constitutional* if they are provided on neutral or public sites.

Prayer. At times the courts have been asked to extend the ban on all forms of prayer during school hours to other school-related forums. A 40-year tradition of reading prayers over a loud speaker before home football games was ruled unconstitutional by a federal district court in Georgia because the practice lacked a secular purpose (*Jager v. Douglas County School Dist.* 1987).

Some courts have affirmed while others have overruled the constitution-

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ality of prayers at graduation. [Factors influencing the cases include: Do school officials plan and recite the prayers? Is attendance voluntary? Is graduation understood to be ceremonial or educational in nature? Does the prayer promote one religion?]

Baccalaureate services, voluntary graduation prayer ceremonies held off school grounds, have not been challenged in the reported case law. If school officials take no part in planning, promoting, or conducting the event, they "probably can avoid the establishment clause problem..." (Benjamin Sendor, *A Legal Guide to Religion and Public Education*, 1988)

One of the highpoints of school life for young children — **holidays** — sometimes has prompted an establishment challenge because of the religious symbols associated with the event. In general, schools can use holidays as opportunities to "teach about religion... the origin, history, and generally agreed upon meaning of the observances." (*Religion in the Public School Curriculum, 1989*).

In 1981 the Eighth Circuit Court of Appeals upheld a school policy permitting holiday observances (such as singing Christmas carols and displaying symbols) "which have a religious and a secular basis." The holidays mentioned included Christmas, Easter, Passover, Chanukah, St. Valentine's Day, St. Patrick's Day, Thanksgiving, and Halloween. (*Florey v. Sioux Falls School District* 49-5, 1980).The court cited the policy's instructional purpose to teach about culture and religion as well as the temporary nature of the displays.

A mixed bag of practices

Although the "no religion" trend in curriculum, textbook publishing, and teacher training has been clear and consistent, school practices across the nation have varied. Reasons are mixed. For one, the only public remedy of First Amendment violations is legal action. No federal agencies stand ready to monitor schools and pursue violators as they do in areas of racial and sexual discrimination. Consequently prayers, religious books, and local aid might continue until a dissenter goes to court.

Another reason is that most of the case law is generated in the 13 federal circuits having courts that often render different interpretations of the First Amendment. (Decisions in each circuit are binding only on courts in that district.) Until a case reaches the Supreme Court, say on the display of a Bible in the classroom, federal court decisions nationwide might diverge.

Laws are another factor. The Equal Access Act (to secondary school facilities) and Education Consolidation and Improvement Act (stipulating "equitable participation" of private school students in Chapter 1 programs) have the effect of involving public schools with religious groups.

According to the Equal Access Act of 1984:

> It shall be unlawful for any public secondary school which receives federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

Access is not required; schools might limit after-school use to curricular purposes and thereby avoid the demands of an open forum. But once a "limited open forum" is created by allowing building use by a nonschool group, then all groups — including religious ones — also must have access.

Religion as curriculum

Despite confusion surrounding different forms of public aid to religious schools, teaching about religion in the curriculum has not posed problems for the courts. In one landmark case, *Abington Township v. Schempp* (1963) (banning recitation of the Lord's Prayer or a portion of the Bible as a classroom exercise), Justice Clark, writing for the majority, upheld the constitutionality of instruction about religion:

> ...it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment.

But most schools went beyond the limits set in a variety of school and religion cases decided in the intervening decades. Consequently, textbooks, courses, libraries, and class discussions all but excluded the role of religion in society's past and present.

According to NSBA's *Censorship: Managing the Controversy*, "As a result, there has been a censorship of omission: Textbooks gloss over religion, teachers avoid discussing it, and curriculum guides fail to find a place for it."

The result, says California School Superintendent Bill Honig, is that "Kids are ethically illiterate. They will choose their own religion and ethical standards, but we can inform their choice. It's not just technical knowledge we must teach, but ethics, morality, and understanding."

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Another curriculum issue, however, has been more difficult. How should courts resolve claims that curriculum materials advance a religion, namely secular humanism (a form of atheism/agnosticism)? In *Mozert* (1987), the appeals court overturned a lower court decision requiring schools to let students "opt out" of a Holt, Rinehart, and Winston textbook reading series because the secular humanist material was offensive to parents' religious beliefs. Exposure to ideas, the court said, is not equivalent to forced conduct or affirmation of belief.

In the past, courts have favored the school board's authority to determine curriculum and the importance of protecting curriculum from religious influences.

A policy trend

School boards should proceed carefully with policy development to ensure sound educational value, religious neutrality, and prohibition of religious practices and observances unrelated to curriculum. Policies might set guidelines in the following areas:

- curriculum
- release time for religious instruction
- school ceremonies, celebrations, and programs
- teacher classroom practices, including optional materials and displays
- facility use by student or community religious groups
- prayer, Bible reading, and silent meditation
- baccalaureate services
- invocations
- distribution and display of religious materials
- excusal from instruction and activities (staff and students)
- school calendar (including scheduling standardized, midterm, or final exams on religious holidays).

For some boards, policy development is the order of the day; others will tackle revision of policies on separation of church and state, teaching about religion, school ceremonies and observances, community use of facilities, special interest materials, and student absences, among others.

In July 1989 the Trumbull (CT) School Board updated its policy on separation of church and state:

> ...neutrality need not preclude nor hinder the Trumbull Public Schools in fulfilling their responsibility to educate students to be tolerant and respectful of religious diversity.... Therefore, the district will approach religion from an objective, curriculum-related perspective, encouraging all students and staff members to be aware of the diversity of beliefs and respectful of each other's religious and/or non-religious views.

The companion regulation "answers" eight questions that teachers responsible for instruction might ask. Guidelines on religious holiday celebrations follow. [The policy and regulation have been included in the administrator's copy of *Updating*.]

Curriculum development

Policy development in religious studies should follow the same process chosen for other new initiatives. A teacher and community advisory committee is one way to develop a consensus on the "what" and "hows" of the curriculum.

The study of religion is well suited and easily integrated into the K-12 sequence: culture, community, and family life in early education (K-3); social studies, literature, history, and the arts in the other grades. Curriculum planning should include a public information program as well as teacher training materials or inservice. (Only professional school staff should deliver the instruction.)

Forthcoming curriculum projects should help school boards provide objective and substantive resources. The Williamsburg Charter Foundation (led by Ernest Boyer, president of the Carnegie Foundation for the Advancement of Teaching) has focused the attention of more than 130 business, academic, government, education, media, and public policy leaders on the history of religious freedom in America. The curriculum project, designed for 5th, 8th, and 11th grades, is scheduled for publication in 1990.

But be careful...

In teaching about religion, schools must not establish, promote, or criticize one religion over others or even religion in general (e.g., by recitation of a nondenominational or state-sponsored prayer or by endorsement of a Christian holiday). Religious occasions in schools are opportunities to learn about, not to practice, religion.

On another level, individual religious freedom must be protected. Schools should not force student participation in observances or practices that might violate their religion, say by encouraging a Muslim to eat meat or a Jehovah's witness to recite the Pledge.

To sum up, school boards have four charges: *teach about religion*, but *allow the free exercise of religion; prevent an establishment of religion*; and *prohibit religious discrimination* in facility use.

The role of policy development is crucial. The stakes are high. Local communities vary both in religious mix and intensity. Nonetheless, students must understand the role of religion in the nation and the world in order to appreciate and preserve their freedoms. Of equal importance is the prevention of one religion, religion in general, or atheism from becoming a matter of dogma and not of choice. Access to public facilities, too, must reflect the American values of religious diversity and public neutrality.

School boards should strive to achieve a delicate balance among the sometimes competing goods of information, individual rights, and a school climate of neutrality — not hostility — toward religion. ■

Remember the article about...

The annual Updating *Index* for 1989 is included in the administrator's copy of this issue. To obtain additional copies (at no charge), just call (703-838-6722), write, or FAX (703-683-7590) the editor. Also in the administrator's packet is a new supplement to the 1989 *Index* that offers a listing of the sample policies.